

REMARKS

Claims 1-5, 39-54, and 72-81 are pending in the current application. Of the above claims, 39-54 have been cancelled without prejudice as drawn to a method of practicing the invention. Therefore, claims 1-5 and 72-81 are currently pending in the present application, and currently stand rejected. Claims 1,3,4 and 77-81 have been amended in the present amendment, while Claims 39-54 have been cancelled without prejudice to their introduction in a later filed application.

Elections/Restrictions

Claims 39-54 have previously been withdrawn from consideration as being drawn to a non-elected invention. These claims are now being cancelled without prejudice to being introduced into a later filed divisional application, to allow the present amendment to be a complete response to the final rejection dated April 20, 2004.

35 USC § 103 Rejections

The Examiner rejects claims 1-5 and 72-81 as being obvious under 35 U.S.C. §103(a) in view of the combination of the Bartels, et al. U.S. Patent No. 4,621,632 (hereinafter '632) when it is combined with the Danielle, et al. U.S. Patent No. 6,050,260 (hereinafter '260). The Examiner states "Bartels, et al. teaches all of the limitation of the claims except for explicitly reciting a humidity sensing means and a monitoring means connected to the humidity sensing means for monitoring the humidity of the gas and keeping it within a determined threshold. Danielle, et al. teaches a humidity sensing means and a monitoring means for monitoring the humidity of the gas and keeping it within a determined threshold. It would have been obvious to one of ordinary skill in the art, at the time of invention, to have modified the humidity device of Bartels to monitor humidity by a humidity sensing means, while keeping the humidity with a

predetermined range or threshold for the well-known purpose of preventing a cavity that is normally moist from drying out thereby causing inflammation causing discomfort.”

In the “Response to Arguments” section on page 3 of the Official Action, the Examiner states that the intended use in laproscopic surgery is not relevant to apparatus claims, only to method claims, in that it imposes no structural limitation on the claimed apparatus. Applicants respectfully disagree with the Examiner’s position. The independent claims impose a structural limitation that the apparatus is adapted to be in flow communication with the insufflator. This is a structural limitation, not a statement of intended use.

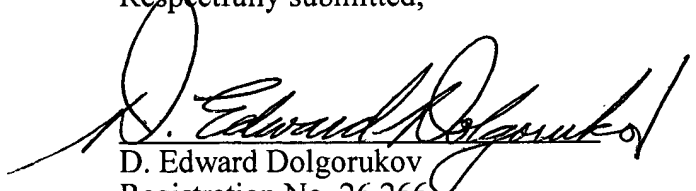
Claim 1, which requires that an audio or visual signal be generated when the humidity of the gas drops below a predetermined threshold, is neither anticipated by nor obvious in light of these references. Daniell, et al. and Bartels, et al., whether taken singly, or in combination, simply do not do this.

In the portion of Danielle et al., relied upon by the Examiner, a reading representing humidity is used to turn up the fan speed as the humidity increases. No audio or visual signal appears to be generated. The portions of Bartels et al., relied upon by the Examiner, do not indicate that any humidity sensing is performed at all.

Claim 81 has been amended to provide that the apparatus is connected to a trocar. Neither Bartels et al. or Daniell et al., as relied upon by the Examiner, demonstrate delivery of gases to a patient in this manner, and thus, Claim 81 is allowable.

In view of the above amendments, and the remarks explanatory thereof, a favorable reconsideration of the present application, and the passing of this case to issue is courteously solicited.

Respectfully submitted,



D. Edward Dolgorukov  
Registration No. 26,266

ATTORNEYS

MARSHALL & MELHORN, LLC  
Four SeaGate, Eighth Floor  
Toledo, Ohio 43604  
(419) 249-7146  
(419) 249-7151 Facsimile